

To: OSWER OPM PARMS[OSWER_OPM_PARMS@epa.gov]
From: Hostage, Barbara
Sent: Thur 8/13/2015 11:12:59 AM
Subject: EPA's Colorado Spill Could Boost Push For Broad Mining Policy Revisions

Daily News

EPA's Colorado Spill Could Boost Push For Broad Mining Policy Revisions

Posted: August 12, 2015

EPA's accidental release of 3 million gallons of contaminated mine wastewater from a Colorado mine during a cleanup operation could boost a push for broad revisions to federal mining policies including calls for EPA Superfund financial assurance rules for mining and changes to Good Samaritan law, environmentalists say.

The Aug. 5 spill of wastewater containing several heavy metals has already prompted legal threats which could, if pursued, result in a precedent-setting court ruling on whether EPA is liable for the spill under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law. Attorneys say that CERCLA includes broad protections against liability for EPA when it performs a site cleanup.

EPA Administrator Gina McCarthy in an Aug. 12 statement said as a result of the spill she has ordered all agency regional offices to "immediately cease" all field investigations at mining sites unless imminent risk is present until the agency can assess the root causes of the spill at the Gold King Mine in Colorado. The spill was the result of an accidental release triggered by an EPA cleanup team's work at the mine, located in the state's San Juan County.

The release has flowed into the Animas River through southwestern Colorado into New Mexico and the Navajo Nation, triggering states of emergency in both states and a threat of legal action from the Navajo Nation.

It has triggered high-level attention, with daily press briefings from three EPA regional administrators and an Aug. 12 visit to Colorado and New Mexico by McCarthy to inspect response efforts, including water quality sampling and validation of water quality data. Colorado's Department of Public Health and Environment on Aug. 12 told the city of Durango, CO, that drinking water treatment facilities can begin to use the Animas River to collect and treat water for customers, and said that regarding private water systems, not all wells are affected by the spill.

McCarthy in her Aug. 12 statement said, “We are in the process of initiating an independent assessment by a sister federal agency or another external entity to examine the factors that led to last week’s incident. Based on the results of that study, she said, “we will determine what actions may be necessary to avoid similar incidents at other sites.”

Further, she has told regions to identify sites similar to the Gold King Mine, “and to identify any immediate threats and consider appropriate response actions” while it plans its cleanup work at the mine.

EPA's eventual short- and long-term cleanup strategies could also set a precedent for responding to future, similar spills -- but the accident is also prompting renewed calls for other mining policy reforms.

Financial Assurance

Environmentalists point to the spill as highlighting the need for regulatory or legislative measures affecting mine cleanups in order to better protect against adverse environmental impacts.

For instance, a spokeswoman for Earthworks, an environmental group that has sued EPA for failing to issue bond rules under CERCLA for the mining sector, says the spill “highlights the need for CERCLA financial assurance regulations” as it underscores “the severity of environmental impacts that can occur if a mine site is allowed to fester because financial assurance isn’t available or adequate for cleanup.” She says this is particularly the case for mines with long-lasting water treatment requirements from acid mine drainage.

Earthworks is one of several environmental groups that sued EPA arguing the agency is long past due in developing [CERCLA financial assurance rules](#) to require owners of hazardous waste facilities to prove they have sufficient funds to pay for cleanup, accidental releases and post-closure care should any of those measures be needed.

The petitioners are working to reach agreement with EPA on a schedule for the agency’s issuance of such rules governing the hardrock mining industry after a federal appellate court ruled in May that EPA should update and expedite its schedule for issuing the rules and submit a joint plan with the petitioners to the court. EPA in recent months has said it plans to issue a draft version of the hardrock mining rules next August.

Mining Laws

Environmentalists say the mine spill also should prompt reforms to outdated mining laws. While the spill “is tragic,” Earthworks’ Pete Dronkers says in [an Aug. 11 blog post](#) on the group's website, “the focus should be less on the crew that accidentally triggered the release, and more on the broader story of entire regions throughout the country, facing immense cleanup challenges from mines of the past.”

He says given the tens of thousands of abandoned mines and inactive mines that leak -- impacting water quality -- now is the time to urge “elected officials and regulators to create the framework needed to address the broader problems.” Specifically, the 1872 mining law does not require companies to pay any royalty payments to the federal government, and allows new mega-mines to be built with perpetual mine drainage, he says.

Reforming the law is overdue, he says. “By placing a federal prohibition on new mines that we know will pollute forever we will make sure that no mine gets built that can’t clean up after itself. And by making mining companies help pay to correct past mistakes, we can make sure agencies and citizen groups have the money they need to do remediation projects properly and holistically, not pinching pennies and cutting corners because of federal budget cuts,” he adds.

While mining reform legislation has been introduced in recent years, Democratic and Republican lawmakers have differed over key details, particularly over first-time royalty fees to pay for an abandoned mine cleanup fund.

Good Samaritan

The spill also underscores the need to revisit Good Samaritan legislation, says a source with the San Juan Citizens Alliance, which has long advocated for addressing acid mine drainage along the Animas River.

While EPA has sought to promote “Good Samaritan” [cleanups of mine sites](#) through guidance aimed at reducing Clean Water Act (CWA) liability for innocent groups that voluntarily clean up abandoned hardrock mines, some groups have advocated for additional liability protections under the law to prompt such cleanups.

Voluntary parties -- known as Good Samaritans -- have been reluctant to clean up abandoned mines because of concerns that courts will hold them liable under CERCLA and the CWA for remaining contamination. Legislation attempting such changes has not passed, however. Environmental groups have not universally embraced Good Samaritan legislation, fearing it will give mining companies unanticipated loopholes to exploit, the citizens' alliance source says.

EPA estimates there are about 500,000 abandoned mines, which could cost more than \$35 billion to clean up. Historic mines have polluted the headwaters of 40 percent of the watersheds in the West.

The spill also underscores that stakeholders in downstream communities across a watershed -- not just those closest to a mining site -- should be given weight by EPA when considering stakeholder input into a cleanup, the source says. The Silverton, CO, community -- surrounding the mine -- had resisted a Superfund listing designation for the site, the source says, but notes that community was the least affected by the spill compared to downstream communities. The site is not listed on Superfund's National Priorities List, but rather was part of an EPA response action.

Lawmakers' Scrutiny

Meanwhile, top lawmakers on the Senate Environment & Public Works (EPW) Committee indicated this week they are closely monitoring EPA's cleanup of the Animas River spill, with EPW Chairman Jim Inhofe (R-OK) saying in a statement he will work within his committee "to ensure the EPA is held accountable to this grave incident."

EPW ranking member Barbara Boxer (D-CA) in [an Aug. 11 letter to McCarthy](#) called on EPA to ensure timely information be provided to communities on the spill and urged the agency "to take steps to ensure that a similar incident does not happen in the future," as well as asking EPA to brief her office.

In the House, Natural Resources Committee Chairman Rob Bishop (R-UT) on Aug. 12 announced his plan to visit Lake Powell, a reservoir on the Colorado River on the border of Utah and Arizona.

"EPA's grave blunder is posing a serious threat to both the environment and the economy in Colorado, New Mexico, Utah, and Arizona. Lands and projects managed by the Department of the Interior and Forest Service - not to mention the tribal concerns -- within my Committee's jurisdiction will be seriously and negatively impacted. In the coming weeks and months, the Committee will be conducting extensive oversight over the causes and the short-term and long-term effects of this serious situation," Bishop said. -- *Suzanne Yohannan* (syohannan@iwpnews.com)